



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1002]

Certain Carbon and Alloy Steel Products; Commission Determination to Terminate the Investigation with Respect to the Antitrust Claim; Request for Written Submissions on Remedy, the Public Interest, and Bonding with Respect to Defaulting Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the investigation with respect to a claim by complainant United States Steel Corporation of Pittsburgh, Pennsylvania (“U.S. Steel”) for violation of section 337 based on a conspiracy to fix prices and control output and export volumes in violation of the antitrust laws of the United States. The Commission requests written submissions, under the schedule set forth below, on remedy, public interest, and bonding concerning the previously defaulted respondents subject to the false designation of origin claim.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS)

at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337-TA-1002 on June 2, 2016, based on a complaint filed by complainant U.S. Steel, alleging a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"). See 81 FR 35381 (June 2, 2016). The complaint alleges violations of section 337 based upon the importation into the United States, or in the sale after importation of certain carbon and alloy steel products by reason of: (1) a conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; and (3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The notice of investigation identified forty (40) respondents that are Chinese steel manufacturers or distributors, as well as some of their Hong Kong and United States affiliates. *Id.* In addition, the Office of Unfair Import Investigations is also a party in this investigation. *Id.* Eighteen (18) respondents participated in the investigation and all other respondents were found in default, including fifteen (15) respondents that are subject to the false designation of origin claim: 1) Shandong Iron and Steel Group Co. Ltd. of Jinan City, China; Shandong Iron and Steel Co., Ltd. of Jinan City, China; Jigang Hong Kong Holdings Co., Ltd. of Hong Kong, China; and Jinan Steel International Trade Co., Ltd. of Jinan City, China; 2) Benxi Iron and Steel (Group) International Economic and Trading Co. Ltd. and Benxi Steel (Group) Co. Ltd., both of Benxi City, China; and 3) Tianjin Tiangang Guanye Co., Ltd. of Tianjin, China; Wuxi Sunny Xin Rui Science and Technology Co., Ltd. of Wuxi Province, China; Taian JNC

Industrial Co., Ltd. of Tai'an City, China; EQ Metal (Shanghai) Co., Ltd. of Shanghai, China; Kunshan Xinbei International Trade Co., Ltd. of Jiangsu, China; Tianjin Xinhai Trade Co., Ltd. of Tianjin, China; Tianjin Xinlianxin Steel Pipe Co., Ltd. of Tianjin, China; Tianjin Xinyue Industrial and Trade Co., Ltd. of Tianjin, China; and Xian Linkun Materials (Steel Pipe Supplies) Co., Ltd. of Xi'an City, China (collectively, the "Defaulting Respondents"). See Comm'n Notice (Oct. 14, 2016), Comm'n Notice (Oct. 18, 2016), Comm'n Notice (Nov. 18, 2016).

On August 26, 2016, the participating respondents filed a motion to terminate U.S. Steel's antitrust claim under 19 CFR 210.21. On November 14, 2016, the presiding administrative law judge ("ALJ") issued an initial determination ("ID"), granting Respondents' motion to terminate Complainant's antitrust claim under 19 CFR 210.21 and, in the alternative, under 19 CFR 210.18. Order No. 38 (Nov. 14, 2016). On December 19, 2016, the Commission issued a Notice determining to review Order No. 38. See 81 FR 94416-7 (Dec. 23, 2016). On April 20, 2017, the Commission held an oral argument on the issue of whether a complainant alleging a violation of section 337 based on antitrust law must show antitrust injury.

On February 15, 2017, U.S. Steel filed a motion to partially terminate the investigation on the basis of withdrawal of its trade secret allegations, which were alleged against only certain of the participating respondents. On February 22, 2017, the ALJ issued an ID, granting U.S. Steel's motion to terminate the investigation with respect to its trade secret allegations. Order No. 56 (Feb. 22, 2017). On March 24, 2017, the Commission determined not to review Order No. 56. Comm'n Notice (Mar. 24, 2017).

On October 2, 2017, the ALJ issued an ID, granting the remaining participating respondents' motions for summary determination of no section 337 violation based on false designation of origin. Order No. 103 (Oct. 2, 2017). On November 1, 2017, the Commission determined not to review Order No. 103. Comm'n Notice (Nov. 1, 2017).

Having examined the record of this investigation, including Order No. 38, the petitions for review, the responses thereto, the parties' submissions on review, and the parties' statements at the oral argument, the Commission has determined that a complainant alleging a violation of section 337 based on antitrust law must show antitrust injury, which is a standing requirement. The Commission finds that U.S. Steel has failed to plead antitrust injury and U.S. Steel has taken the position that, if given the opportunity to amend the complaint, it will not be able to plead or demonstrate antitrust injury. Accordingly the Commission has determined to terminate the investigation with respect to U.S. Steel's antitrust claim. Commissioner Broadbent dissents and has filed a dissenting opinion.

Section 337(g)(1) and Commission Rule 210.16(c) authorize the Commission to order relief against any defaulting respondent against which U.S. Steel alleged false designation of origin, unless, after considering the public interest, the Commission finds that such relief should not issue. Given the disposition of the underlying false designation of origin claims for the participating respondents in Order No. 103, any relief issued in this investigation would not apply to the participating respondents.

In connection with the final disposition of this investigation, the Commission may:

(1) issue an order that could result in the exclusion of articles manufactured or imported by the Defaulting Respondents; and/or (2) issue cease and desist orders that could result in the Defaulting Respondents being required to cease and desist from engaging in unfair acts in the

importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors that the Commission will consider include the effect that the exclusion order and/or cease and desists orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, including the Office of Unfair Import Investigations, interested government agencies, and any other interested parties are encouraged

to file written submissions on the issues of remedy, the public interest, and bonding.

Complainant and the Office of Unfair Import Investigations are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the HTSUS numbers under which the accused products are imported and any known importers of the accused products. The written submissions and proposed remedial orders must be filed no later than close of business on March 30, 2018. Initial submissions are limited to 50 pages, not including any attachments or exhibits related to discussion of the public interest. Reply submissions must be filed no later than the close of business on April 6, 2018. Reply submissions are limited to 25 pages, not including any attachments or exhibits related to discussion of remedy, the public interest, and bonding. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1002") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission

is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel^[1], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: March 19, 2018.

Lisa R. Barton,

Secretary to the Commission.

^[1] All contract personnel will sign appropriate nondisclosure agreements.

